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July 26, 2010

**BY ELECTRONIC FILING AND U.S. MAIL**

Hon. Kiyo A. Matsumoto  
United States District Court - Eastern District of New York  
225 Cadman Plaza East  
Room 1227  
Brooklyn, New York 11201

**Re: The Gerffert Company, Inc., et al. v. James Dean, et al., Case Number  
1:09-CV-00266-KAM-CLP**

Hon. Kiyo A. Matsumoto:

I am writing this letter in response to your order dated July 23, 2010.

Like Mr. Kandler expresses in his July 26, 2010 letter to this Court, it is unclear to us as well what Mr. Benjamin's role in the July 30, 2010 conference would be if he is allowed to participate. Specifically, it is unclear whether Mr. Benjamin will represent the plaintiffs, Mr. Magnotti, Mr. Horowitz, some combination thereof, or attempt to offer expert testimony regarding attorney ethics.

Regardless of Mr. Benjamin's capacity, it is inappropriate for him to participate in the July 30, 2010 conference. If Mr. Benjamin represents Mr. Magnotti or Mr. Horowitz, neither of them is a party to this action, and therefore it would be inappropriate for Mr. Benjamin to participate. If Mr. Benjamin represents Plaintiffs in this case, he still should not be permitted to participate in the July 30, 2010 conference, as he has not made an appearance in this case.

Rather, because Mr. Benjamin has not made an appearance in this case, it appears that Plaintiffs are seeking to have Mr. Benjamin provide expert testimony regarding attorney ethics and conflicts. While such testimony might be appropriate at an evidentiary hearing, such testimony is inappropriate at a pre-motion conference.

Therefore, Defendants Andrea Bonella, Fratelli Bonella srl and William J. Hirten Co. LLC must object to Mr. Benjamin participating in the pre-motion conference scheduled for July 30, 2010.

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Hon. Kiyo A. Matsumoto  
July 26, 2010  
Page 2 of 2

Respectfully,



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Co., LLC, Andrea Bonella, Fratelli Bonella,  
s.r.l., Mario Bonella, and Gianfranco  
Bonella

KIS/KIS

cc: Hon. Cheryl L. Pollak  
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